Quarterly Report

of the

ATTORNEY GENERAL

of

ALABAMA

For The Period

From July 1, 1957

Through September 30, 1957

VOLUME 88

JOHN PATTERSON, Attorney General

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QUARTERLY REPORT

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TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS OF ALABAMA:

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from July 1, 1957, through September 30, 1957, is published in compliance with the provisions of Title 55, Section 228, Code of Alabama, 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy or county solicitor of his county. This section also requires that I send a copy of this report to each circuit solicitor and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, county, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

JOHN PATTERSON,
Attorney General.

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Attorney General

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OPINIONS

July 3, 1957

Honorable Charles C. McWhorter
Chairman
Board of Revenue
Lawrence County
Moulton, Alabama

Board of Revenue—Loans—Warrants.

1. Temporary loans by boards of revenue, under the provisions of Title 12, Section 124, Code of Alabama 1940, must mature not later than February first of the year following under the provisions of Title 12, Section 125, Code of Alabama 1940.

2. Board of revenue has authority to issue short term gasoline tax anticipation warrants of county.
Opinion by Assistant Attorney General Madison.

Dear Sir:

I have your letter of July 1, 1957, which is as follows:

"Due to the necessity of Lawrence County to pay recent right of way condemnation awards into Court out of the gasoline fund of Lawrence County in order to gain the right of entry so that certain State road projects proposed for Lawrence County may be commenced, the current operating funds in the gasoline fund have been reduced to such an extent that the Lawrence County Board of Revenue deems it wise and necessary, if possible, to borrow approximately $40,000.00 to be used on a temporary basis to repay such loan at regular monthly intervals over a period of the next year. The Board of Revenue does not feel that it is wise to issue long term gasoline tax anticipation warrants for this amount of money and desires to handle it in the nature of a temporary loan, if possible.

"The attention of the Board of Revenue has been called to Section 124 et seq. of Title 12 of the 1940 Code of Alabama, whereby this Board is authorized to make temporary loans in anticipation of taxes and to pledge such taxes to secure the repayment of such loans.

"Please render me your opinion on the following questions:

"1. May the Board of Revenue of Lawrence County legally obtain a temporary loan in anticipation of taxes against the gasoline fund of said County under the provisions of said Section 124 et seq. of Title 12 of the 1940 Code of Alabama and pledge such gasoline fund receipts for the repayment of such loan in monthly payments over a period of the next twelve months?

"2. If your answer to the first inquiry above is in the negative, please advise as to whether or not there is any other legal method whereby the Lawrence County Board of Revenue may make a temporary loan with a local bank at an interest rate not to exceed 4% per annum and pledging for the repayment of such temporary loan any funds in the gasoline fund of Lawrence County, Alabama, which may be covered into such fund during the next twelve months which are not already pledged."

With reference to your question numbered 1, it appears that you desire that the temporary loan shall run for a period of twelve months. Section 125, Title 12, Code of Alabama 1940, provides that the loan shall mature not later than February 1, of the year following, which would, in my opinion, prevent you from making a twelve-month loan, if it is contemplated that the loan will be made now or in the near future.

In answer to your question numbered 2, I am enclosing herewith a copy of an opinion reported in Quarterly Report of Attorney General, Vol. 48, p. 219, which I suggest you follow in making the loan. This opinion, together with Act. No. 728, General and Local Acts 1953, p. 982, if you come within the provisions thereof, is ample authority for issuing short term gasoline tax anticipation warrants.

Yours very truly,
JOHN PATTERSON
Attorney General

July 8, 1957

Hon. K. L. McRae, Mayor
City of Decatur
Decatur, Alabama

Docks Commission — Mayor — Municipalities — Officers and offices—Salaries.

1. The Director of the State Docks holds an office of profit.

2. A mayor holds an office of profit.

3. One may not at one and the same time hold the office of Director of State Docks and the office of mayor.

4. A public officer may not waive his compensation provided by law.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion bearing date of July 1, 1957, is as follows:

"I would like for you to give me an official ruling as to whether I can serve as Mayor of Decatur, without pay, and at the same time serve as Director of Alabama Docks, with pay.

"There has been a controversy in my mind and with other people as to the legality of this situation. I would like to refer you to the Jimmy Thrower case, as well as others in Alabama. Jimmy Thrower, under Governor Persons' administration served as Mayor of Dothan and was also a member of the ABC Board from 1951 to 1955."

By virtue of Section 280, Constitution of Alabama 1901, no person shall hold two offices of profit at one and the same time in this State except justices of the peace, constables, notaries public and commissioners of deeds.

Under Title 41, Section 5, subsection 7, Code of Alabama 1940, no person shall hold two offices of profit at one and the same time in this State except notaries public.

A state, county, or municipal office, whether elective or appointive, carrying as a necessary incident to its exercise some part of the sovereign power of the State is an office of profit under the State within the meaning and purview of the above constitutional and statutory provisions. **State ex rel. Glenn v. Wilkinson**, 220 Ala. 172, 124 So. 211; **State v. Sanders**, 187 Ala. 79, 65 So. 378.

This office has heretofore held that the office of mayor of a municipality is an office of profit within the purview of Section 280, supra. Biennial Report of Attorney General, 1928-30, page 636; Report of Attorney General, Office Edition, Vol. 3, page 94.

By virtue of Title 37, Section 440, Code of Alabama 1940, as amended by Act No. 111, General and Local Acts 1956, page 168, the salary of a mayor must be fixed by the municipal council within maximum and minimum limits prescribed by said statute. Quarterly Report of Attorney General, Vol. 82, page 46. I understand that your salary as Mayor of the City of Decatur has been fixed by your City Council at $6,000 per year. This compensation may not be waived by you. Our courts have held that such a waiver is against public policy. **Hamilton v. Edmundson**, 235 Ala. 97, 177 So. 743; **Jefferson County v. O'Gara**, 29 Ala. App. 281, 195 So. 267; **Rice v. Tuscaloosa County**, 242 Ala. 62, 4 So. 2d 497; **Jefferson County v. Chase**, 244 Ala. 56, 12 So. 2d 343.

Therefore, I am of the opinion that you, as Mayor of the City of Decatur, hold an office of profit within the meaning and purview of Section 280, supra.

The Alabama State Docks Department was created by and its functions are controlled by Act No. 103, General and Local Acts 1955, page 345. It is an agency of the State and a part of the executive branch thereof. **State Docks Commission v. Barnes**, 225 Ala. 403, 143 So. 581. Cf. **State ex rel. Austin et al. v. City of Mobile, et al.**, 248 Ala. 467, 28 So. 2d 177.

Sections 1 and 2 of Act No. 103, supra, read as follows:

"Section 1. The Alabama State Docks Board created by an Act which became effective August 1, 1951 (Acts of the Legislature of Alabama, 1950-51, Vol. I, page 450) is hereby abolished. Hereafter there shall be a state agency known as the Alabama State Docks Department, hereinafter sometimes referred to as the Department, to promote, supervise, control, manage and direct the state docks and all other state lands included within the jurisdiction of this chapter. The Department shall consist of a Director of State Docks and a State Docks Advisory Committee, as hereinafter provided. The Alabama State Docks Department shall be the agency of the State through which the State shall accomplish the maintenance and operation of all the improvements and facilities authorized by Chapter 1 of Title 38, Code of Alabama (1940), as amended.

Section 2. The chief executive officer of the Department shall be known as the Director of State Docks, and shall be appointed by the Governor with the advice and consent of the Senate, and shall hold office at the Governor's pleasure. All the powers, authority and duties vested in the Alabama State Docks Department shall be exercised by the director, who shall be a man of good character with business experience. He shall have no financial interest in any harbor facilities or property that the Department has acquired or may acquire or manage; nor shall he have any financial or personal interest in any business or enterprise of any sort with which the Department deals in the management of the affairs of the facilities under the control and jurisdiction of the Department. The salary of the director shall be fixed by the Governor at an amount not to exceed twelve thousand dollars ($12,000) per annum, to be paid as the salaries of the employees of the Department are paid."

A person is invested with part of the sovereignty of the State where specific statutory and independent duties are imposed upon him in relation to exercise of the police powers of the State, or he is vested with independent power in the disposition of public property or power to incur financial obligations on the part of the State, or he is empowered to act in those cases involving public or political feelings between individuals and the public. **State ex rel. Webb v. Pigg**, 249 S. W. 2d 435.

Therefore, I am of the opinion that the Director of State Docks holds an office of profit within the meaning and purview of Section 280, supra.

Premises considered, you are advised that you may not at one and the same time hold both the office of Mayor of the City of Decatur and the office of Director of State Docks.

Very truly yours,

JOHN PATTERSON
Attorney General

July 17, 1957

Hon. Richmond C. McClintock
Mayor
City of Dothan
Houston County
Dothan, Alabama

Bail — Bonds — Forfeitures — Mayor — Municipalities — Recorder's Court.

1. The Mayor is Ex Officio Recorder in municipalities which have no Recorder.

2. The authority of the Mayor in cases in Recorder's Court is controlled by Title 37, Section 599, Code of Alabama 1940.

3. The Mayor may not remit to the surety on an appearance bond the amount of a forfeiture entered against such surety by the Recorder.

Opinion by Assistant Attorney General Gish.

Dear Mr. McClintock:

Your request for an official opinion, bearing date of July 15, 1957, is as follows:

"Under the provisions of Title 55, Section 240, Code of Alabama of 1940, as amended, I request your written opinion on the following question: "Does the Mayor of the City of Dothan, Alabama, have the legal authority to remit to the surety or sureties on an appearance bond in the Recorder's Court of said City the amount of a final forfeiture entered against such surety by the Recorder upon the failure of the defendant to appear and after a conditional forfeiture has been entered and notice thereof given to such surety?"

By virtue of Title 37, Section 600, Code of Alabama 1940, in municipalities which have no Recorder, the Mayor is Ex Officio Recorder. I assume from your inquiry that the City of Dothan has a Recorder and that you are not Ex Officio Recorder.

In municipalities, which have a Recorder who is not a Mayor, the authority of the Mayor in cases in Recorder's Court is controlled by Title 37, Section 599, Code of Alabama 1940. This section does not authorize the Mayor to remit to the surety on an appearance bond the amount of a forfeiture entered against such surety by the Recorder.

Therefore, your question is answered in the negative.

Yours very truly,

JOHN PATTERSON
Attorney General

July 19, 1957

Hon. O. C. Farris
Mayor
Town of Calera
Shelby County
Calera, Alabama

Bonds—Funds—Hospitals—Municipalities.

A municipality may not invest its surplus funds in bonds issued by a medical clinic board created pursuant to the provisions of Act No. 516, General and Local Acts 1955, page 1160.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion, bearing date of July 17, 1957, is as follows:

"On March 16, 1943, the Town of Calera, Alabama, a municipal corporation had outstanding the following:

"$4,500.00 6% Refunding Street and Bridge Bonds, due October 1, 1945, (Nos. 1 to 9 inclusive).

"$7,000.00 6% Series 'A' School Bonds, due July 1, 1947 (Nos. 3 to 5, inclusive; 16 to 72 inclusive; 78 to 87 inclusive).

"The above were general obligations of the Town of Calera, Alabama. "The Town Council of said Town on March 16, 1943 adopted Ordinance No. 135 (copy enclosed) providing for the issuance of Refunding Bonds to take up the bonded indebtedness mentioned above, and new refunding bonds were issued for that purpose.

"The Refunding Bonds, covered by the aforementioned ordinance, were made general obligations of the Town of Calera, Alabama, and there was also pledged the five mill tax authorized by Amendment XVII of the Constitution of 1901, State of Alabama, for the payment of said Bonds. The Constitutional Amendment aforesaid provided for the levy of a five mill tax for general purposes and an additional five mill tax for the payment of indebtedness as therein referred to. The Refunding Bonds aforementioned were issued and $8,000.00 of them are outstanding at this time.

"When the ten mill tax was collected annually, after the adoption of said Ordinance, one-half of it was passed into the General Fund of the town, and the other one-half was passed into a fund carried on the

books as Bond Fund, Town of Calera. The principal and interest on the above bonds were always paid out of the fund known as the Bond Fund, and there has accumulated in this fund an excess of something over fifteen thousand dollars, which will not be needed for the payment of any indebtedness due on the Refunding Bonds in January 1958.

"As provided in Title 37, Sections 853, etc., pocket parts of the Code of Alabama, embracing Chapter 19 thereof, there has been set up in the Town of Calera a Clinic Board, the name of which is to be the Medical Clinic Board of the Town of Calera, Alabama, which, of course, is issuing the revenue bonds to be sold to procure money to erect, complete and equip the medical clinic.

"Section 265 of Title 37 of the Code of Alabama provides that all sinking funds provided for the retirement of bonds shall be invested in bonds of such subdivision; or in bonds of the United States, or in bonds of the State of Alabama, or in bonds of any county in the State of Alabama, or any municipal corporation of the State of Alabama.

"The Town of Calera desires your opinion as to whether or not the fifteen thousand dollars of the money now in the Bond Fund can be used to purchase bonds of the Medical Clinic Board of the Town of Calera, Alabama. In other words, is the Medical Clinic Board of the Town of Calera, Alabama, a municipal corporation within the meaning of the term used in Section 265 of Title 37 of the Code of Alabama?

"The taxes for the coming year will be due October 1, 1957, and there will be sufficient money coming in from the constitutional levy of the five mill tax to more than pay the obligation of the Refunding Bonds due in January 1958.

"It should be noted that Ordinance 136 does not create a sinking fund but the five mill tax levy under the Constitution as hereinbefore set out has been passed into a Bond Fund for the payment of Refunding Bonds and we would like to have your opinion also as to whether or not it constitutes a sinking fund."

The Medical Clinic Board of the Town of Calera was created pursuant to the provisions of Act No. 516, General and Local Acts 1955, page 1160.

In an opinion rendered to Hon. Grover A. Bice, Mayor, Town of Thorsby, under date of June 25, 1957, this office held that municipal general obligation bonds are the only type of municipal bonds in which a municipality may invest. I herewith enclose a copy of said opinion.

There is no statute authorizing a municipality to invest in bonds issued by a medical clinic board incorporated pursuant to Act No. 516, supra.

Premises considered, I am of the opinion that the Town of Calera may not invest its surplus funds in bonds issued by the Medical Clinic Board of the Town of Calera.

Yours very truly,

JOHN PATTERSON
Attorney General

July 19, 1957

Honorable Woodrow Burks
Superintendent of Education
Lawrence County
Moulton, Alabama

Schools—County Board of Education—County Superintendent of Education—Employment, Employers and Employees—Insurance.

1. School bus drivers who are not independent contractors must be employed by the joint action of the county board of education and the county superintendent of education.

2. Where county board of education under arrangement with filling stations to store and furnish gasoline for school busses, county board and not the superintendent of education has the authority to select filling stations and no joint action is required.

3. Where county furnishes gasoline for school busses, it has the right to select the filling stations where the gasoline will be stored and dispensed for such use.

4. County board of education and not the superintendent of education has the authority to select the insurance companies from whom liability insurance is purchased and no joint action of the superintendent and board is required.
Opinion by Assistant Attorney General Madison.

Dear Sir:

I have a letter from Honorable Russell W. Lynne in which he requests for you my opinion on the following questions.

"1. Whether or not the Superintendent of Education of Lawrence County, Alabama has the right to the appointment of the bus drivers for the County Schools or whether this right of appointment is vested in the County Board of Education?

"2. Lawrence County has been buying gasoline for use in the school buses and placing the same in various and sundry filling stations located over the County and paying the said filling stations two cents per gallon for the pumping of the said gasoline into the school busses and Mr. Burks wants to know whether or not he has the right to choose the filling stations or whether or not this right is vested in the Board of Education.

"3. Lawrence County school system has been in the habit of taking out

liability insurance on the students attending the county schools and issuing a certificate to each student that is desirous of being covered by this master policy and he wants to know whether or not he has the right to choose the insurance company from whom is purchased the policy or whether or not the Board of Education has this right."

The intimate official relations between the county board of education and the superintendent are fully set forth in the case of **Shores v. Elmore County Board of Education**, 241 Ala. 464, 3 So. 2d 14.

That opinion points out that under Sections 86 and 123, Title 52, Code of Alabama 1940, all principals, teachers and other regular employees of the Board are to be appointed by the Board on the written recommendations of the Superintendent. This requires joint action as pointed out in **Roberts v. State**, 228 Ala. 222, 153 So. 432.

The bus drivers are, therefore, appointed by the joint action of the superintendent and the Board. This upon the assumption, however, that they are not independent contractors using their own busses, but are regular employees of the Board.

The school transportation system is under the control of the County Board of Education. **Shores v. Elmore County** Board of Education, 241 Ala. 464, 3 So. 2d 14. If your second question means that the Lawrence County Board of Education is buying the gasoline, the superintendent would act in an advisory capacity only as to selecting the filling stations, final authority, however, resting in the Board. Here no joint action is required by law.

If you mean that Lawrence County is furnishing the gasoline, the county would have the right to select the fiillng stations.

In answer to question three, the board of education has the right to take out the liability insurance. **Hughes v. Hartford Accident & Indemnity Co.,** 223 Ala. 59, 134 So. 461. This case should be carefully considered or else the insurance may not afford the expected protection.

Yours very truly,

JOHN PATTERSON
Attorney General

July 23, 1957

Honorable Joseph J. Mullins
New Mullins Building
Clanton, Alabama

Hospitals—Nurses—Counties.

The funds of a county hospital, incorporated under Act. No. 46, General and Local Acts of Alabama 1949, page 68, may be used for the purpose of financing a lecture course for training nurses.

Opinion by Assistant Attorney General Screws.

Dear Sir:

This is to acknowledge receipt of your letter of July 16, 1957, which is as follows:

"The Board of Directors of the Chilton County Hospital, A Corporation, organized under Act Number 46 of the Acts of Alabama, 1949, at Page 68, has directed me, as Secretary of the Corporation, to request your official opinion, as Attorney General of the State of Alabama, on the following question:

"The Board of Directors of the Chilton County Hospital Board believes that it would be beneficial, in the operation of the Chilton County Hospital, and the nursing home which it contemplates opening in September, 1957, to furnish the money to finance a lecture course to train people who desire to be licensed as practical nurses, in view of the fact that there will be a great need by the Chilton County Hospital Board for practical nurses when the nursing home is opened, and that such nurses are not, at this time, available. It is contemplated that this course would be given at the hospital by a person hired by the hospital, and would train applicants to the extent that is necessary to enable them to qualify as practical nurses under the laws of the State of Alabama. It is also contemplated that those seeking this training would be largely local people, and would be available to the Hospital Board for employment as above outlined.

"The funds available from which the Board would like to make this payment are:

"1st. A four-mill tax levied by authority of a local election held in Chilton County, Alabama, levied, 'to be used solely for acquiring, by purchase, lease, or otherwise, constructing, operating, equipping, or maintaining County Hospitals, or other public hospitals, non-profit hospitals, and public health facilities.'

"2nd. Funds derived from the general operation of the general operation of the hospital.

"It might be well to call to your attention that the hospital operating fund is made up of the following items:

"1st. Tax money transferred to the fund for operating purposes.

"2nd. Small, accumulated profits.

"In view of the fact that it is contemplated that the nursing home will be opened in September, 1957, the Board has requested that I ask you to please give us a prompt answer to the above questions."

In a letter of this office to you under date of November 9, 1956, it was held that the Chilton County Hospital Board had no authority to use the proceeds of its hospital tax for the purpose of granting a three year scholarship for training professional nurses.

However, in my opinion, the financing of a lecture course, as the one in question, would come within the purview of Section 2(c) of Act No. 46, General and Local Acts of Alabama 1949, page 68, which provides as follows:

" 'Hospital' includes the plural as well as the singular and means public hospitals of all types, public clinics, public health centers, and related public health facilities such as laboratories, out-patient departments, nurses' homes and nurses' training facilities. and central service facilities operated in connection with public hospitals."

The contemplated operation, in my judgment, comes within the term "nurses' training facilities", as above used.

Yours very truly,

JOHN PATTERSON
Attorney General

August 1, 1957

Hon. Glen Curlee
Circuit Solicitor
Nineteenth Judicial Circuit
Wetumpka, Alabama

Solicitors—Appropriations.

1. The solicitors fund for the Nineteenth Judicial Circuit, provided for in Act No. 91, General Acts 1956, Second Special Session, page 396, may be used by the solicitor for supplies, postal service, books, fixtures and facilities necessary for law enforcement and in the proper discharge and conduct of the duties

of the office of solicitor when approved by the county governing body.

2. Although an item of service or equipment necessary for the conduct of the office of solicitor, or necessary for law enforcement, may be purchased out of the State appropriation or by the county governing body, such services or equipment, if necessary for law enforcement and in the proper discharge and conduct of the duties of the office of solicitor, may be purchased from the solicitors fund.

3. Statutes enacted providing solicitors with funds for law enforcement service and equipment should be liberally construed. Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion bearing date of July 8, 1957, is as follows:

"Under Act Number 91 of the Legislature of Alabama, approved April 14, 1956, a Solicitor's Fund was created for the Nineteenth Judicial Circuit. A portion of Section 2 of said act reads as follows: 'The circuit solicitor of the Nineteenth Judicial Circuit is hereby authorized and empowered to make requisition on the solicitor's fund for the payment of any and all expenses incurred by him for law enforcement and in the proper discharge and conduct of the duties of his office, as may be approved by the governing body of the county, etc.'

"An opinion is requested as to whether or not under this act the circuit solicitor for the Nineteenth Judicial Circuit may purchase from this fund supplies, postal service, books, fixtures, and facilities for use in conducting the business of his office. An opinion is expressly requested as to whether or not an air conditioning unit may be purchased out of this fund for use in the solicitor's office."

As stated in your inquiry, Section 2 of Act No. 91, General Acts 1956, Second Special Session, page 397, provides as follows:

"Section 2. The circuit solicitor of the Nineteenth Judicial Circuit is hereby authorized and empowered to make requisition on the solicitor's fund for the payment of any and all expenses incurred by him for law enforcement and in the proper discharge and conduct of the duties of his office, as may be approved by the governing body of the county, except that such requisition for the payment of expenses shall not exceed one thousand dollars ($1,000) in any one calendar year. The county treasurer or custodian of county funds shall pay out such funds upon requisition of the solicitor."

Your inquiry is whether or not the following items may be purchased from the solicitors fund, the expenditures of which are governed by Section 2, supra:

Supplies, postal service, books, fixtures and facilities, and an air conditioning unit.

It is my opinion that the items above enumerated may be purchased from the solicitors fund if approved by the county governing body when such items are necessary or proper for law enforcement and "in the proper discharge and conduct of the duties" of the office of the circuit solicitor. Admittedly, supplies, fixtures and facilities are of too general a classification to require a specific answer by this office. If you will specify the supplies, fixtures and facilities which you desire to purchase, we will be glad to render an opinion concerning those items.

It is well to note that the General Appropriation Act of 1955 for the fiscal years ending September 30, 1956 and September 30, 1957 (Act No. 348, General and Local Acts 1955, pages 797, 800) provides an appropriation of $20,000 per annum "for telephone service, stationery, stamps, and necessary equipment for the office use of circuit solicitors, deputy circuit solicitors or assistants." All of the items mentioned in your inquiry may be purchased under the provisions of the above noted appropriation. Postal service (stationery and stamps) is specifically mentioned in the items of the General Appropriation Act, supra. Necessary equipment might include books, supplies, fixtures and facilities used in connection with the solicitor's office. The State Purchasing Department would be authorized to purchase necessary equipment, telephone service, stationery and stamps for circuit solicitors and pay for the same out of the said $20,000 appropriation.

Furthermore, this office has held that the county governing body, under the provisions of Title 12, Sections 178 and 185, Code of Alabama 1940, may purchase fans for the office of the circuit solicitor, if that office is in the courthouse, as well as fans for all offices in the courthouse. See Quarterly Report of Attorney General, Vol. 56, page 18. In an opinion of this office under date of January 14, 1949 (Quarterly Report of Attorney General, Vol. 54, page 25), it was held that Title 13, Section 240, Code of Alabama 1940, required the county governing body to furnish a suitable office for the use of the circuit solicitor and other solicitors in the county in which they reside, but that certain equipment could not be furnished by the county, but must be furnished by the State. The items of equipment required to be furnished by the State, as provided for in Section 240, supra, are "telephone service, stationery, stamps and other necessary equipment for the use of such offices..." The appropriation referred to in the General Appropriation Act, supra, is without a doubt intended to provide for the furnishing of the enumerated equipment and services.

However, it is common knowledge that a requisition for equipment to be paid out of the $20,000 appropriation in the General appropriation

Act or a requisition upon the county governing body to purchase such equipment and services may be refused for various reasons. Funds may be inadequate or unavailable, or funds may be necessary to be used for other purposes.

In my opinion, the fact that the Legislature has provided in the General Appropriation Act for the payment of telephone service, stationery, stamps and necessary equipment for the office use of circuit solicitors and other solicitors, and the fact that this office has held that the county governing body may purchase such equipment as electric fans, does not prevent the solicitor from resorting to and using the solicitors fund, as provided for in Section 2 of Act No. 91, supra, to purchase such supplies and equipment. The solicitor may perhaps request the State to make an allotment from the fund provided for in the General Appropriation Act for such purchases, but he may also request the county governing body to make an authorized purchase of supplies and equipment, and the solicitor may, or may not, succeed in obtaining the necessary allotment or appropriation of funds from those sources.

Section 2 of Act No. 91, supra, shows the legislative intent to allow the solicitor with the consent of the county governing body to incur any expense for law enforcement and in the proper discharge and conduct of the duties of his office. Such language is not restrictive but broad in its authorization. In my opinion, therefore, the circuit solicitor, under the provisions of Section 2 of Act No. 91, supra, may purchase supplies, books, fixtures and facilities, which supplies, books, fixtures and facilities are necessary for law enforcement and in the proper discharge and conduct of the duties of the solicitor's office. Since the supplies, books, fixtures and facilities are not more particularly described, I can give no more specific answer than that above stated.

It may be pointed out that certain books are requited to be furnished to solicitors by the State, such as the Code (Title 55, Section 197(2), 1955 Cumulative Pocket Parts, Code of Alabama 1940; Act No. 650, General Acts 1939, page 1023, approved July 10, 1940) and the Reports of the Supreme Court and Court of Appeals (Title 13, Section 72, Code of Alabama 1940).

As to postal service, in my opinion, the solicitor may make requisition upon the appropriation in the General Appropriation Act or he may buy such postal service from the solicitors fund.

In my opinion, an air conditioning unit may be purchased from the solicitors fund in that it is my view that such expense is incurred for the proper discharge and conduct of the office of the solicitor. The proper discharge and conduct of the office of the solicitor requires a comfortable office. It is further my opinion that an air conditioning unit may be considered as necessary equipment within the meaning of appropriation for solicitors above referred to in the General Appropriation Act. Of course,

such expenditure would be subject to allotment and approval by the Finance Department.

It should be noted that the Legislature has enacted much legislation providing for the expenses of the circuit solicitors. See: Act No. 419, 1951 Acts, page 742; Act. No. 460, 1953 Acts, page 564; Act No. 289, 1953 Acts, page 354; Act No. 196, 1953 Acts, page 262; Act No. 100, 1955 Acts, page 344; Act No. 283, 1955 Acts, page 649; Act No. 339, 1955 Acts, page 761; Act No. 312, 1955 Acts, page 710; Act No. 47, 1956 Acts, page 339; Act No. 24, 1956 Acts, page 48; Act No. 139, 1956 Acts, page 199; Act No. 72, 1956 Acts, page 364; Act No. 99, 1956 Acts, page 145; and Act No. 91, 1956 Acts, page 396.

The above acts, in my opinion, were designed to provide the solicitor with services and equipment that he formerly lacked and should be given a liberal interpretation.

Very truly yours,

JOHN PATTERSON
Attorney General

August 5, 1957

Hon. John R. Phillips
Albea and Phillips
Attorneys at Law
321-323 Old Anniston National Bank Building
Anniston, Alabama

Sheriffs—Calhoun County—Witnesses—Costs and Fees—Mileage.

1. A sheriff and his deputies are entitled to receive witness fees in criminal cases when subpoenaed by the State even though such sheriff and deputies are on a salary basis.

2. A sheriff and his deputies on a salary basis are entitled to receive witness fees in criminal cases when subpoenaed by the State even though they travel in automobile furnished by a governmental unit.

3. Under the provisions of Act No. 67, General and Local Acts 1956, First Special Session, page 99, approved February 7, 1956, the Sheriff of Calhoun County and his deputies claim their witness fees from the general fund of the county instead of the fine and forfeiture fund of the county, and witness fees and mileage thereafter collected are required by Section 6 thereof to be paid into the general fund of the county.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

I have your inquiry in behalf of the Sheriff of Calhoun County which reads as follows:

"As attorney for the sheriff of Calhoun County, Alabama, I am requesting your opinion on a question which has arisen in the sheriff's office of Calhoun County, Alabama concerning whether or not witness fees received by the sheriff and his deputies and fees paid for mileage in criminal cases should be paid to the general funds of the County.

"The question came up in connection with an audit which is now being performed by the State Auditors of the records and books of the sheriff's office. The Auditor seemed to think that Section 6 of local act No. 67 which was passed by the Legislature in the 1956 special session and which appears on page 99, Acts of Alabama, Volume 1, Special Session 1956, required that witness fees collected by the sheriff and his deputies, and fees for mileage expenses should be paid into the general funds of the county.

"As attorney for the sheriff, I do not believe that this local act changes the previous methods by which the sheriff and his deputies were allowed to keep such witness fees and mileage fees.

"In checking on this question, I refer you to Volume 3 of the reports of the Attorney General of Alabama, at page 35, where this similar question was answered, and in which it states that the sheriff and his deputies are entitled to their per diem and mileage when attending court as a witness for the state in any criminal prosecution. I refer you also to an inquiry addressed to your office by the Honorable J. H. Dobbins, clerk and register of the Circuit Court of Calhoun County, Alabama, on February 21, 1956 in which you referred him to an opinion rendered by the Attorney General under date of April 13, 1949 to the Honorable John E. Mandeville, clerk of the Circuit Court of Mobile County which appears in Volume 55 at Page 21 of the Attorney General Reports.

"I, therefore, request that you give the sheriff an opinion on the following questions:

"1. Should the fees received by the sheriff and his deputies for appearances as witness in criminal cases in Calhoun County be paid into the general funds of Calhoun County?

"2. Whether the sheriff and his deputies are entitled to be paid for mileage in connection with their appearance as witnesses in criminal

cases in Calhoun County even though county owned vehicles are used in attending Court.

"3. Whether the mileage fees received by the sheriff and his deputies for their appearance as witnesses in criminal cases of Calhoun County, Alabama should be paid into the county funds."

In my opinion, the sheriff and his deputies are entitled to his and their witness fees and mileage.

Witnesses in criminal cases are entitled to a witness fee and mileage (Title 11, Section 103, Code of Alabama 1940). When such witnesses, including the sheriff and his deputies, are subpoenaed by the State in a criminal prosecution, fees and mileage are taxed against the defendant if he is convicted or the prosecutor when costs are imposed upon the prosecutor (Title 11, Section 104, Code of Alabama 1940).

In the event that the defendant or prosecutor is unable to pay costs as shown by the return of an execution "no property found," witness fees and mileage are paid from the fine and forfeiture fund of the county under the provisions of Title 11, Sections 104, 110, Code of Alabama 1940. Witness and mileage fees are also paid from the fine and forfeiture fund for State witnesses (1) if the defendant is not convicted, (2) if the indictment is withdrawn and filed, and (3) if the prosecution is abated by the death of the defendant (Title 11, Sections 104, 110, supra).

Amendment XXXIII to the Constitution of Alabama 1901 allows the Legislature to place the Sheriff of Calhoun County on a salary. This amendment further allows the Legislature to "provide for the fees charged and collected by said officers to be paid into the treasury from which their salaries are paid..." Pursuant to this constitutional amendment, the Legislature has placed the Sheriff of Calhoun County on a salary basis (Act No. 185, Local Acts 1947, page 10, approved July 24, 1947). Section 1 of said act fixes the compensation of the sheriff on a salary basis to be paid out of the county treasury. Section 2 of said act provides as follows:

"Section 2. That when this Act goes into effect said Sheriff of Calhoun County shall continue to collect all charges, fees, compensation and allowances heretofore or hereafter authorized to be collected by him, including all monies for feeding prisoners, and shall during the last five (5) days of each calendar month pay into the County Treasury of Calhoun County, Alabama all such monies received or collected by him during the month, or part thereof, next preceding the date of such settlement or payment."

This office has heretofore held that a sheriff and his deputies, even though they are on a salary basis, are entitled to receive their fees for appearing as a witness and their mileage for the reason that such fees and

mileage inure to them as an individual and not because of an official duty as sheriff or deputy. Futhermore, even though the sheriff or his deputy attends court after traveling to court in an automobile furnished by a governmental unit, he is still entitled to receive his mileage. Quarterly Report of Attorney General, Vol. 3, page 35; Vol. 55, page 21.

It results, therefore, that the sheriff and his deputies are entitled to receive their witness and mileage fees when appearing as a witness in criminal cases, having been summoned by the State, even though said sheriff is on a salary basis and even though he travels in an automobile furnished by the county.

The act referred to in your inquiry, Act No. 67, General and Local Acts 1956, First Special Session, page 99, approved September 7, 1956, is a general act of local application applying to Calhoun County. The act applies to counties of not less than 73,000 nor more than 93,000 inhabitants according to the last Federal Decennial Census. The 1950 Federal Decennial Census placed the population of Calhoun County at 79,539. Act No. 67, supra, simply abolishes the fine and forfeiture fund of Calhoun County and establishes in lieu thereof the general fund of Calhoun County. Stated otherwise, the fine and forfeiture fund was merged with the general fund. This act in no way changes the right of the sheriff and his deputies to receive witness fees and mileage when summoned as witnesses in criminal cases for the State.

Section 5 of Act No. 67, supra, allows any person appearing as a State's witness in a criminal case, who procures a certificate of attendance from the clerk, to receive immediate payment from the general fund of the county. Section 6 of Act No. 67, supra, provides as follows:

> "Section 6. Costs and fees in all criminal cases shall continue to be taxed as now provided by law, provided, however, that any fees hereafter collected for state's witnesses in the circuit court, county court or other inferior court shall be paid by the officer collecting same into the general fund of the county and it shall be the duty of the clerk, or other officer, of any of the courts here concerned, upon the passage and approval of this act, to pay over any money held by such officer for the payment of fees of witnesses before the grand jury or state's witnesses in criminal cases in any of the courts here concerned, to the general fund of the county."

In my opinion, Section 6 merely requires costs in criminal cases to continue to be taxed as is now provided by law. Fees that are collected for State's witnesses in circuit court, county court or other inferior court are required to be paid into the general fund of the county because the general fund of the county has already paid the witness his witness fee and mileage.

It is, therefore, my view that the sheriff and his deputies claim their

fees from the general fund, as prescribed by Section 5 of Act No. 67, supra, and if the clerk or other officer later collects such fees from the defendant or prosecutor (Title 11, Section 104, Code of Alabama 1940), then said collected amounts by reason of Section 6, supra, are paid into the general fund of the county.

Very truly yours,

JOHN PATTERSON
Attorney General

August 7, 1957

Hon. Joel Robinson
County Solicitor
Walker County
Jasper, Alabama

Municipalities—Criminal Law.

If the police jurisdictions of two or more municipalities overlap, each of said municipalities is authorized to exercise criminal jurisdiction within the overlappng area.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion, bearing date of July 30, 1957, is as follows:

"A situation has arisen in Walker County, wherein two municipalities have become involved in a dispute concerning their respective police jurisdiction. Briefly the facts are as follows:

"Town A and Town B lie within three miles of each other; Town B persists in making arrests and raids within fifty (50) yards of the city limits of Town A; in following the language of the statute, defining police jurisdiction, the place of arrest would lie wtihin the police jurisdiction of each municipality, however, the language of the statute defining police jurisdiction, in so far as licenses are concerned, confines the police jurisdiction of adjoining municipalities to a point half way between the municipalities.

"This is the question upon which I desire an opinion be rendered. Can two municipalities exercise criminal police jurisdiction over the same area at the same time, or is the criminal police jurisdiction vested solely in the nearest municipality?"

Title 37, Section 9, Code of Alabama 1940, reads as follows:

"§ 9. Police jurisdiction; territorial.—The police jurisdiction in cities having six thousand or more inhabitants shall cover all adjoining territory within three miles of the corporate limits, and in cities having less than six thousand inhabitants, and in towns, such police jurisdiction shall extend also to the adjoining territory within a mile and a half of the corporate limits of such city or town. Ordinances of a city or town enforcing police or sanitary regulations and prescribing fines and penalties for violations thereof, shall have force and effect in the limits of the city or town and in the police jurisdiction thereof, and on any property or rights of way belonging to the city or town."

In 1926, in the case of **Hammonds v. City of Tuscaloosa,** 21 Ala. App. 286, 107 So. 786, the Court of Appeals held that the City of Tuscaloosa was authorized to make arrests within that part of its police jurisdiction which overlaps into the police jurisdiction of the City of Northport.

In 1948, in the case of **Town of Graysville v. Johnson.** 33 Ala. App. 479, 34 So. 2d 708, the Court of Appeals held that where a business is located within the police jurisdictions of more than one municipality, that municipality which is located nearest to the place of such business may levy a license tax thereon pursuant to Title 37, Section 733, Code of Alabama 1940, as amended by Act No. 502, General Acts 1943, page 477. See Quarterly Report of Attorney General, Vol. 69, page 60. The opinion in the case of **Town of Graysville v. Johnson,** supra, reads, in part, as follows:

"Our court in Hammonds v. City of Tuscaloosa, 21 Ala. App. 286, 107 So. 786, apparently stated a doctrine that is out of harmony with the view we now express. We do not at this time deem it appropriate or necessary to attempt to clarify or modify the holding in the Hammonds case, supra. This for the very good reason that we are here concerned with the provisions and limitations of a specific, applicable statute which has for its purpose the fixation and collection of licenses for the privilege of operating any business, trade or profession which is located without the corporate limits of towns and cities and within the police jurisdiction thereof."

Therefore, I am of the opinion that the rule announced in the case of **Hammonds v. City of Tuscaloosa,** supra, is still the law.

Of course, the police jurisdiction of one municipality may never extend into the corporate limits of another municipality. **City of Homewood v. Wofford Oil Company,** 232 Ala. 634, 169 So. 288; **Quarterly Report of Attorney General,** Vol. 24, page 62.

Premises considered, you are advised that if the police jurisdictions of

two or more municipalities overlap, each of said municipalities is authorized to exercise criminal jurisdiction within the overlaping area.

Yours very truly,

JOHN PATTERSON
Attorney General

August 8, 1957

Honorable Roy C. Snead
Sheriff, Calhoun County
Anniston, Alabama

Sheriffs—Expenses.

Act No. 66, General and Local Acts 1956, First Special Session, page 99, does not authorize sheriffs of counties having a population of not less than 75,000 nor more than 93,000 inhabitants to be paid an expense account or allowance from the general fund of the county.

Opinion by Assistant Attorney General Young.

Dear Sir:

Your request for an official opinion, bearing date of June 7, 1957, is as follows:

"I am requesting your opinion on a question which has arisen in the Sheriff's Office and other county offices in connection with an act passed by the Legislature in the Special Session of 1956.

"House Act No. 66 Act of Alabama, Special Sessions, 1956, Volume One, Page 99, which was passed in the Special Session of 1956 and applies to Calhoun County, Alabama, provides under Section Two of said act as follows:

" 'The governing body of any county in which this act applies is hereby authorized and empowered to expend from the general fund of the county, in addition to all other sums now provided by law, for the efficient operation of the offices of Judge of Probate, Tax Assessor, Tax Collector, Sheriff and Clerk of the Circuit Court, and for increasing the salaries or compensation of the clerks, deputies and assistants and for employing additional help in said offices, any amounts deemed to be reasonable and necessary by the said county governing body.'

"The question under this act which we ask your opinion is as follows:

"1. May the county governing body of Calhoun County, under Act No. 66 referred to above, pay the sheriff or other office holders named in said act an expense allowance or account in addition to their set salaries?"

My answer to the inquiry you have presented is in the negative.

I have arrived at this conclusion by the following reasoning:

The only words in Act No. 66, General and Local Acts 1956, First Special Session, page 99, susceptible of the construction that the Sheriff of Calhoun County may be paid an expense account is "for the efficient operation" of such office. It is my considered opinion that these words are not sufficiently broad to authorize a disbursement from the general fund of Calhoun County for the payment of an expense account or allowance to the sheriff.

Irrespective of my opinion on this, however, which is purely a matter of construction, it is manifest by the act itself that such an expenditure was not the intention of the Legislature in passing this enactment.

Submitting to the rule of statutory construction that if a statute is broader than its title,, that portion which is within both the title and body of the act can stand, while that part not indicated by the title will fall (see Opinion of Justices, 247 Ala. 195, 23 So. 2d 505), it will be seen that if the words in the body of the act "for the efficient operation" are taken to mean that an expenditure as you suggest is authorized, then such act would be unconstitutional since it is in no manner intimated by its title.

The title to Act No. 66, supra, states:

"Relating to counties having a population of not less than 75,000 nor more than 93,000 inhabitants; to authorize county governing bodies to provide clerk-hire allowances for the offices of Judge of Probate, Sheriff, Tax Collector, Tax Assessor and Clerk of the Circuit Court." (Emphasis supplied.)

The portion underscored in the above title to Act No. 66, supra, makes it clear that it is to provide only for salary increases for clerks, deputies and assistants and for employing additional help in said offices—all for the efficient operation of such office. No mention is made of an expense allowance for the sheriff nor does such act contain any words from which such a construction could be made.

As stated before, to so construe the act as authorizing the payment to the sheriff or other office holder named therein an expense allowance or

account in addition to their set salaries would necessarily render it unconstitutional as being broader than that intimated by its title.

I might add that expenses normally incurred for the efficient operation of the office of Sheriff of Calhoun County are seemingly already provided for by law. Act. No. 185, Local Acts 1947, page 101, provides, inter alia:

> "Section 4. The governing body of Calhoun County, Alabama, shall supply to the Sheriff of Calhoun County, Alabama all necessary equipment and supplies, including four (4) automobiles and motor fuel for the operation of said automobiles, and accessories, upon the written requisition of said officer."

Act No. 218, General and Local Acts 1951, page 490, provides in part (repealing Section 3 of Act No. 185, supra):

> Section 4. The governing body of Calhoun County shall provide the officers enumerated herein with the necessary quarters, books, stationery, office equipment, supplies, postage and other conveniences and equipment for the proper and efficient conduct of the affairs of their offices."

And when services are performed for the sheriff which are reasonably necessary for the suppression of crime, the apprehension of criminals, or the proper performance of the sheriff's duties, Act No. 593, General and Local Acts 1949, page 925, supplements the above by providing as follows:

> "Section 1. That the county governing body of each of the several counties of the State may, in its discretion, and upon application of the sheriff of the county, purchase for the use of the sheriff any equipment or supplies and pay for any services performed for the sheriff which are reasonably necessary for the suppression of crime, the apprehension of criminals, or the proper performance of the sheriff's duties."

I am not in a position to speculate as to the nature of any further expenses which may be incurred by the sheriff which might be an exception to my present opinion, however, my opinion above merely answers your general inquiry as to whether sheriffs may be paid an expense allowance under Act No. 66, supra.

I hope this sufficiently answers your question and if there is any further assistance this office can give you feel free to call upon us.

Yours very truly,

JOHN PATTERSON
Attorney General

August 8, 1957

Hon. C. J. Coley
Ex-officio Chairman
Court of County Commissioners
Tallapoosa County
Dadeville, Alabama

Jurors and Juries—Counties.

A county has no authority to pay doctor's bills or hospital expenses for a juror stricken while performing jury duty.

Opinion by Assistant Attorney General Screws.

Dear Sir:

This is to acknowledge receipt of your letter of August 7, 1957, in which you present the following:

"In June, 1957 a Special Term of the Circuit Court for the West side of the Tallapoosa River in Tallapoosa County at Alexander City, Alabama was held.

"During the trial of a capital case during this term, one of the jurors became ill and at the direction of the Judge a medical doctor was called to attend him. The juror was then taken to a Hospital at the direction of the doctor.

"Please advise us if Tallapoosa County is authorized to pay any or all of the doctor's and/or hospital bills."

In my opinion your inquiry should be answered in the negative.

I know of no provisions of law, either expressed or implied, which authorize a county to pay doctor's bills or hospital expenses for a juror stricken while performing jury duty. Public funds can not be expended unless there is express authority or authority necessarily implied.—**State, ex rel. Towle v. Stone**, 236 Ala. 82, 181 So. 281; Quarterly Report of Attorney General, Vol. 76, page 37.

However, if the juror in question is indigent, county funds may be expended for his medical and hospital expenses.—Quarterly Report of Attorney General, Vol. 63, page 31.

Yours very truly,

JOHN PATTERSON
Attorney General

August 13, 1957

Honorable Leland G. Enzor
Mayor, City of Andalusia
Covington County
Andalusia, Alabama

Municipalities—Convicts—Counties—Prisoners—Hard Labor.

1. County prisoners may not be hired out to persons, firms or corporations, nor to municipalities.

2. Prisoners sentenced to confinement in the county jail may not be used as hard labor for the county but merely in janitorial and similar services in and around the county jail.

3. County hard labor prisoners may be used to work upon any of the public works and buildings of the county, and to preserve or develop drains or drainage districts.

Opinion by Assistant Attorney General Rinehart.

Dear Sir:

Your request for an official opinion, bearing date of July 16, 1957, is as follows:

"Under the recent Act passed by the Legislature of Alabama, persons convicted of misdemeanors must be retained in the County Jails. Can you give me an opinion on the following question:

"May these prisoners, on a voluntary or involuntary basis, be used by the County Sheriff or a City to perform any or all of the following functions: Public building janitor service, street cleaning, cleaning street right-of-ways, cleaning private lots and drainage ditches for mosquito control or any related work."

The misdemeanor prisoners to which you refer should be divided into two categories: Those sentenced to confinement in the county jail, and those sentenced to hard labor for the county. I assume from your reference to " . . . the recent Act passed by the Legislature. . . . " that your question pertains to county hard labor prisoners.

The handling and use of county hard labor prisoners is governed by Title 45, Article 5, Sections 91-105, Code of Alabama 1940, as amended. The hiring or lease of county convicts is expressly forbidden by Title 45, Section 92, Code of Alabama 1940. Because of the wording of Section 92, supra, unless express statutory authority is found elsewhere in Article 5 for the hiring of county hard labor prisoners to municipalities, this hiring cannot be done. No such statutory authority appears in Article 5.

The next question is upon what type of works and projects can the county use its hard labor prisoners. Title 45, Section 100, Code of Alabama 1940, as amended by Act No. 377, Acts of Alabama 1955, page 705, also forbids the hiring or leasing of prisoners to persons, firms or corporations but does grant the authority to work county hard labor convicts in and around the court house, in and around the jail, or in any other public buildings or works of the county. It is my opinion this section permits the use of county hard labor convicts upon all works and projects upon which the county is authorized to expend funds or which it has an obligation under the law to develop, improve or maintain. Therefore, the mere fact that a particular project would be within the city limits of a particular municipality would not be controlling. Rather the use of the prisoners would depend upon the county's authority or duty to do the particular work or service. For example, certain streets in a town may nevertheless be county maintained roads so as to authorize the use of county hard labor prisoners to build, repair, or clean the street rights of way. Similarly, the cleaning of a private lot would depend upon whether the cleaning was done pursuant to some power or duty of the county, such as maintaining sanitary conditions or removing noxious weeds. Of course, Title 45, Sections 101-104, Code of Alabama 1940, specifically permit the use of county hard labor convicts to preserve or develop drains or drainage districts. Their use must be in accordance with these sections.

In connection with all the above uses of hard labor prisoners it should be pointed out that there is a difference between hard labor for the county and imprisonment in the county jail. In interpreting Title 15, Section 325, Code of Alabama 1940, the courts have held that imprisonment in the county jail does not include hard labor for the county. **Thompson v. State**, 19 Ala. App. 328, 97 So. 258. It would follow, therefore, that a person sentenced to confinement in the county jail could not be used for hard labor for the county but only for janitorial work and similar service in and around the county jail. On the other hand a person sentenced to hard labor for the county could be used to work upon any of the public buildings or works of the county. But in no event can any county prisoners be hired or leased to either a private person or corporation, or to a municipality.

Very truly yours,

JOHN PATTERSON
Attorney General

August 13, 1957

Hon. M. S. Butler
Sheriff of Montgomery County
Montgomery, Alabama

Attachments—Sheriffs.

1. When a writ of attachment or writ of execution is issued on

personal property of the defendant, consisting of a stock of goods, the sheriff is not authorized to padlock a store or place of business wherein the said goods are found in order to preserve the custody of the officer.

2. Personal property levied on under writ of attachment should be taken into the actual custody of the sheriff, if practicable, and not padlocked on the premises of defendant.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

I have your inquiry of July 10, 1957, which is as follows:

"Re: Padlocking Premises.

"I am requesting an official opinion from your office in regard to padlocking place of business under an Attachment or Judgment execution, until case is settled by the court, or the judgment is paid, or property therein under a levy, is advertised and sold.

"Several opinions by local attorneys varied as to the right of the Sheriff in padlocking a place of business under a Levy or Attachment, whereby the operator is forbidden to continue to remain open, although his property is levied upon or attached.

"I will appreciate you enlightening me if the Sheriff has the right to padlock places of business under a Levy or Attachment, until the property has been sold, or case settled under an Attachment."

In connection with the above quoted inquiry, I am informed by Mr. Fancher Phelps, Deputy Sheriff, that he has in mind the following factual situation:

A suit for the collection of a debt is begun by attachment or is concluded by a levy of execution against the personal property of the defendant, consisting of, say, the stock of goods in a grocery store or a filling station. Perhaps thirty days may elapse between the sale under execution and the levy, or perhaps even a longer time may elapse between the levy of the attachment and the conclusion of the suit. Meantime, the defendant may dispose of his merchandise or supplies, and all that is left for sale would be his equipment.

The real estate or premises are in most cases owned by another person. So, the question is, can the sheriff when an attachment is issued or a levy of execution is made after a judgment, padlock the business consisting of a structure on real estate, thereby preserving the stock of goods of supplies subject to attachment or sale under execution.

From the facts stated in your inquiry, and the additional facts given above as an illustration, I am of the view that the sheriff is without authority to padlock the business premises in question.

Title 7, Section 861, Code of Alabama 1940, applying to writs of attachment, provides in part as follows:

> " . . . and the officer executing the writ must endorse such levy or service thereon and, if practicable, take the property into his possession, unless replevied as hereinafter prescribed."

Title 7, Section 519, Code of Alabama 1940, authorizes the sheriff to levy an execution on personal property of the defendant and it has been held that the sheriff should seize such property when levying execution. **Warrick v. Liddon,** 230 Ala. 253, 160 So. 534. In the case of an attachment, the writ directs the sheriff as follows:

> "You are hereby commanded to attach so much of the estate of _____ as will be of value to satisfy the said debt and costs, according to the complaint; and such estate, unless replevied, so to secure that the same may be liable to further proceedings thereon . . ."

A writ of execution (fieri facias) directs the sheriff that "of the goods and chattels, lands and tenements of _____, you cause to be made the sum of _____ dollars, which _____ recovered of him on the ____ day of _____, 19____, by the judgment of the circuit court, held for the county of _____, besides _____ dollars, costs of suit; and turn the same to render to the said _____; and make return of this writ and the execution thereof according to law." Title 7, Section 506, Code of Alabama 1940.

In the case described above, the sheriff is directed to attach or levy an execution on personal property. Such writs require the sheriff to seize the property described and, if practicable, to take the property into possession. He is required to keep custody of the property during the proceedings following an attachment and to sell the property after a levy of execution.

Although the sheriff must safely keep the property in his custody, he is not directed to padlock the premises where the property may be found, although the padlocking of such premises may be a safe or sure way to keep the custody of the property. Neither the writ of attachment nor writ of fieri facias authorizes the closing or padlocking of a business in order to preserve the custody of personal property. In fact, there are several cases which have held that if the personal property could be removed from the premises but the sheriff leaves that property on the premises, he may be liable for the payment of rent to the owner of the premises. See 4 Am. Juris., Attachment and Garnishment, Section 550, page 889.

It is my opinion, therefore, that such premises should not be padlocked.

Very truly yours,

JOHN PATTERSON
Attorney General

August 15, 1957

Mr. M. E. Cannon
Treasurer, Board of Revenue
Covington County
Andalusia, Alabama

Sheriffs—Counties—Fine and Forfeiture Fund—Covington County.

1. A county is authorized to purchase a generator and battery for use in deputy sheriff's car which is equipped with short wave two way radio under facts stated.

2. Such purchase is payable from the county general fund. The same does not come within the purview of Act No. 29, General and Local Acts 1955, page 54, pertaining to certain expenditure from the fine and forfeiture fund of said county.

Opinion by Assistant Attorney General Screws.

Dear Sir:

This is to acknowledge receipt of your letter of August 14, 1957, which is as follows:

"The sheriff's office in our county is operated on a fee basis, and the sheriff provides transportation for himself and deputies.

"The deputy sheriffs of the county use their personal automobiles and the sheriff pays them a rental fee for this use.

"The County purchased and installed short wave two way radio sets on these cars. The use of these sets, especially at night, is very hard on the generators and battery and replacements must be made more often than on automobiles without this radio equipment.

"Please advise me on the following questions:

"Can the county purchase the generator and battery and pay for them

out of the General Funds of the County?

"Under Local Act of 1955—Page 54 of Volume 1 of the Acts of the Legislature, can the County pay for the generator and battery out of the Fine and Forfeiture Fund of Covington County?"

I am of the opinion that your first inquiry should be answered in the affirmative.

This office has heretofore ruled that a county may furnish radio equipment to be installed in the automobiles owned and operated by the sheriff in the regular pursuit of his duties in detecting crime and apprehending criminals.—Quarterly Report Attorney General, Vol. 46, page 59. A deputy sheriff is an agent of the sheriff in this respect and also comes within the above ruling.—Quarterly Report Attorney General, Vol. 78, page 34. See also Act No. 593, General and Local Acts 1949, page 925. In my judgment the purchase of a generator and battery under the circumstances above set forth may well be considered as part of the purchase of authorized radio equipment, the cost of which may be paid from the General Fund of the County.

In my opinion your second inquiry should be answered in the negative.

Act. No. 29, General and Local Acts 1955, page 54, is a local act relating to Covington County and provides for expenditures for tangibles and services from the fine and forfeiture fund of said county. Section 2 of said Act provides in pertinent part as follows:

"Section 2: The fine and forfeiture fund of Covington County in excess of a ten thousand dollar cash balance may be expended for courtroom fixtures, equipment and supplies; and also for any other tangibles or services that promote the welfare of the Circuit Court of Covington County or aid its efficiency, but not to include salaries, remuneration or emoluments to jurors, circuit court or county officers, elective or appointive, or their regularly employed secretaries now otherwise fixed and prescribed by law. * * *"

The clause "and also for the tangibles and services that promote the welfare of the Circuit Court of Covington County or aid its efficiency" does not, in my judgment, include the purchase of the generator and battery in question. Such a purchase does not pertain to the Circuit Court within the meaning of said act, but rather to the operation of the sheriff's office in regard to law enforcement.

Yours very truly,

JOHN PATTERSON
Attorney General

August 15, 1957

Honorable Chester Walker
Judge of Probate
Tuscaloosa County
Tuscaloosa, Alabama

Counties—Bonds—Funds.

United States Savings Bonds to credit of county in a special fund designated as "paved road bonds sinking funds" may be purchased by the county from that fund out of surplus in county general fund.

Opinion by Assistant Attorney General Madison.

Dear Sir:

This is in reply to your letter of July 23, 1957, which is as follows:

"Tuscaloosa County has a voluntary sinking fund designated as 'Paved Road Bonds Sinking Funds', which was established for the purpose of amortizing the county's outstanding road bond indebtedness, consisting of road bonds issued during the years 1927, 1929, and 1930, which bonds mature in 1957, 1959, and 1960. This sinking fund consists of Jefferson County Board of Education bonds, City of Tuscaloosa Water Works bonds, Tuscaloosa County road bonds, and United States Savings bonds.
"In order to meet road bond obligations of $173,000.00 maturing on September 1, 1957, it is necessary to convert $101,000.00 of United States Savings bonds into cash, the present cash value of which is approximately $92,000.00. Upon presenting these bonds at the First National Bank of Tuscaloosa for conversion into cash, we have been advised that this conversion cannot be made in time for us to remit our funds to the fiscal agent in New York to meet our road bond obligation on or before September 1, 1957. We have already turned the said United States Savings bonds into the bank to be converted into cash, but in view of the fact that we do not expect to receive the cash value thereof until after September 1, 1957, we are faced with either making a temporary loan from a bank, on which interest would be charged, or temporarily using funds now in the Tuscaloosa County general fund for the purpose of meeting our road bond obligations due on September 1, 1957.

"Therefore, in order to save paying a bank interest on a temporary loan while we are waiting for the cash value of the United States Savings bonds to be forwarded to us, we would appreciate your answering the following question.

"Under these circumstances, can we use approximately $92,000.00 from the surplus of the Tuscaloosa County general fund in order to pay our

road bond obligations which mature on September 1, 1957, and replace this money in the general fund upon receiving the cash value of the said United States Savings bonds which have heretofore been kept in a voluntary sinking fund designated as 'Paved Road Bonds Sinking Fund'? "We would appreciate it very much if you could expedite this request so that we may receive an answer within the next week or ten days. We have been hesitant to make this transfer without obtaining your advice because of the matters contained in Quarterly Reports of the Attorney General of Alabama, Volume 63 at Page 68, Volume 20 at Page 85, and Volume 9 at Page 112. However, we feel that it would be good business to save Tuscaloosa County approximately $500.00 to $1000.00 in interest by temporarily using money which is now available in the general fund."

You advise that Tuscaloosa County has a voluntary sinking fund designated as "paved road bonds sinking funds." In this fund, among bonds, are United States Savings Bonds.

You have in the general fund of the county a surplus. In order to meet road bond obligations maturing on September 1, 1957, it is necessary to either sell or convert to cash $101,000.00 of the savings bonds. If these bonds cannot be converted to cash by September 1, 1957, it is my opinion that it is legal for the county to purchase out of the surplus in the general fund the necessary amount of the United States Savings Bonds from the above sinking fund.

In a letter to Hon. James T. Beeland, Judge of Probate, Butler County, dated July 1, 1955, this office approved the purchase from the county's general fund of gasoline tax anticipation warrants. In other words, Butler County, through its general fund, purchased its own gasoline tax warrants.

If the county is legally authorized to make such a purchase, as I have held that it may do, certainly the purchase of United States Savings Bonds is also legally permissible.

Yours very truly,

JOHN PATTERSON
Attorney General

August 19, 1957

Honorable G. C. Brittain
Judge of Probate
Calhoun County
Anniston, Alabama

Taxation—Redemption—Judges of Probate

A judgment creditor is entitled to redeem property sold at a

tax sale under Title 51, Section 303, Code of Alabama 1940.

Property so redeemed by a judgment creditor is not subject to further redemption.

Opinion by Assistant Attorney General Screws.

Dear Sir:

This is to acknowledge receipt of your letter of August 7, 1957, in which you present the following:

"At the regular tax sale for delinquents during the year 1956, a piece of real estate sold at the sale for delinquent taxes. A local building company held a judgment against this property and the judgment is recorded in the judgment records of this office. On March 8, 1957, the company that holds the judgment redeemed the above property and accordingly I issued to this company a certificate of redemption.

"On July 31, 1957 the owners of the property, through their attorney, offered to deposit with me the amount of taxes, fees and interest in an effort to redeem the property.

"May I accept this money from the owners and let them redeem their property? If the owners are allowed to redeem the property, how do I go about recovering the certificate of redemption issued the building company on March 8, 1957 and reimbursing the company for the amount of the redemption?"

In my opinion the first part of your inquiry should be answered in the negative. This obviates the necessity of answering the second part of your inquiry.

It appears that the local building company, which held a recorded judgment against the property in question, was properly allowed to redeem the same as a judgment creditor under the provisions of Title 51, Section 303, Code of Alabama 1940. Since the redemption has been effectuated by one authorized to redeem, said property is not subject to further redemption.

The above is predicated upon the assumption that there was a valid tax sale and a valid redemption.

Yours very truly,

JOHN PATTERSON
Attorney General

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